

House Bill 40
March 6, 2009
Presented by Robert Lane
Senate Natural Resources Committee

Mr. Chairman and committee members, for the record I am Robert Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP).

HB 40 represents a major change in the water right permitting process. FWP supports the fundamental change being proposed.

At meetings of the Water Policy Interim Committee, water right applicants, and those who represent them repeatedly expressed frustration with the application process, not only because it takes a long time, but because it is unpredictable. Applicants can invest a lot of time and money in an application and still be told no. This bill would not guarantee an outcome. However, would help because applicants will know much earlier if they will have a difficult time getting a permit.

HB 40 first clarifies that a correct and complete application is one that contains enough information for the Department of Natural Resources and Conservation (DNRC) to begin evaluating it, not to determine whether the application meets the water right permit or change criteria.

HB 40 also makes it clear that DNRC has the authority to communicate with applicants, evaluate evidence submitted at an early stage and communicate shortfalls in evidence earlier in the process. This is done by creating a new step in the process that requires a "preliminary determination" prior to the application being sent to the larger public for review. If the preliminary determination results in a recommendation to deny the permit, the applicant may appeal that decision to the department. DNRC may then affirm its preliminary determination or propose to grant the permit. Either way the Department proposes to grant a permit, whether before or after a hearing, a notice of the proposal must be published and other parties then have a chance to object.

Applicants want a faster permit process and predictability. This bill improves the permitting process for applicants but preserves other water right holders opportunity to object to an application. FWP urges you to vote for H.B. 40.